

1 Anthony T. Ditty (SBN 105597)
tonyditty@gmail.com
2 **LAW OFFICES OF ANTHONY T. DITTY**
1017 E. Grand Ave.
3 Escondido, CA 92025
4 Tele (760) 747-1200 Fax (760) 747-1188

5 Kerry K. Fennelly (SBN 232621)
Valentina Mindirgasova (SBN 272746)
kfennelly@donaldsonandcornwell.com
6 vmindirgasova@donaldsonandcornwell.com
Cornwell & Baldwin
7 1017 E. Grand Avenue
Escondido, CA 92025
8 Phone: (760) 747-1100
Fax: (760) 747-1188

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10 Attorneys for Plaintiffs,
11 GCIU-Employer Retirement Fund and
12 Board of Trustees of the
GCIU-Employer Retirement Fund

13
14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 GCIU-EMPLOYER RETIREMENT
17 FUND AND BOARD OF TRUSTEES
18 OF THE GCIU-EMPLOYER
RETIREMENT FUND

19 CASE NO. 2:16-CV-00100

20
21 **COMPLAINT**

22 Plaintiff,

v.

23 QUAD/GRAPHICS, INC.,
Defendant.

24 **INTRODUCTION**

25 1. Plaintiffs, GCIU - Employer Retirement Fund and Board of Trustees of the
GCIU-Employer Retirement Fund (collectively “ERF”) bring this action against
26 Defendant Quad/Graphics, Inc. (“Quad”) pursuant to the provisions of Title IV
27 of the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. §1381
28 et seq., as a collection action for the recovery of interim payments on an

1 employer's withdrawal liability as permitted under 29 U.S.C. §§1399(c)(2) and
2 1451(a)(1) and to collect on contributions owed but unpaid.

3 2. The parties are presently arbitrating a dispute arising out of ERF's
4 assessment of withdrawal liability against Quad. To date, Quad has failed to
5 continue to make interim payments of the assessed withdrawal liability while
6 arbitration is pending, an obligation arising under ERISA, 29 U.S.C.
7 §§1399(c)(2) and 1401(d).

8 3. As a matter of law, Quad is required to make the interim payments on the
9 withdrawal liability assessment until a final award is issued in the arbitration
10 and ERF has demanded Quad make those payments. However, Quad has
11 refused and continues to refuse to do so.

12 4. ERF brings this action for (a) a declaration that Quad is obligated to make
13 interim payments on the withdrawal liability assessment until there is a final
14 award in the arbitration proceeding as required by 29 U.S.C. §1401(d); (b) an
15 order finding that Quad is delinquent in the making of, and is required to
16 continue making, interim payments in connection with the withdrawal liability
17 assessment; (c) a declaration that Quad owes ERF interim payments from June
18 2015 until the date of judgment, plus interest, penalties, and attorney's fees,
19 pursuant to 29 U.S.C. §1132; and, (d) an order, pursuant to the Court's legal
20 and equitable powers, requiring Quad to make the interim payments it has failed
21 to make and is required to make under the withdrawal liability assessment, plus
22 interest and penalties, in the amounts of no less than \$321,151.22 for each
23 month they remain unpaid for July 2015 forward. Because this is a continuing
24 obligation, the exact amount will be subject to proof at time of trial or motion
25 for summary judgment.

26 5. ERF also seeks recovery of delinquent contributions due and owing by Quad
27 in connection with payments made to employees for unused vacation time.
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1 6. Pursuant to Section 4301(g) of ERISA, 29 U.S.C. §1451(g), ERF served the
 2 Pension Benefit Guaranty Corporation with a copy of this Complaint by
 3 certified mail addressed as follows: Chief Counsel, Office of the Chief Counsel,
 4 Pension Benefit Guaranty Corporation, 1200 K Street, NW, Washington, DC
 5 20005-4026 and on the Secretary of Labor and Secretary of the Treasury by
 6 certified mail, as required under 29 U.S.C. §1132(h).

7 **JURISDICTION**

8 7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331
 9 because this action under arises under Section 4301(a) and (c) of ERISA, 29
 10 U.S.C. §1451(a) and (c).

11 **VENUE**

12 8. Venue is appropriate in this judicial district pursuant to Section 4301(d) of
 13 ERISA, 29 U.S.C. §1451(d), and 28 U.S.C. §1391), in that the GCIU-
 14 Employer Retirement Fund (“Plaintiff Fund” or “Fund”) is administered at its
 15 principal place of business in City of Industry, California.

16 **PARTIES**

17 9. Plaintiff Fund, is a multiemployer pension plan within the meaning of
 18 sections 3(37) and 4001(a)(3) of ERISA, 29 U.S.C. §§1002(37) and 1301(a)(3).

19 10. Plaintiff Board of Trustees of the GCIU-Employer Retirement Fund (“Board
 20 of Trustees”) is comprised of the present trustees who are the named fiduciaries
 21 of the Plaintiff Fund within the meaning of Section 402(a) of ERISA, 29 U.S.C.
 22 §1102(a), and is the plan sponsor of the Plaintiff Fund within the meaning of
 23 sections 3(16)(B)(iii) and 4001(a)(10) of ERISA, 29 U.S.C. §§1002(16)(B)(iii)
 24 and 1301(a)(10). The Board of Trustees administers the Plaintiff Fund at 13191
 25 Crossroads Parkway North, Suite 205, City of Industry, California 91746-3434.

26 11. Pursuant to sections 502(a)(3) and 4301(a)(1) of ERISA, 29 U.S.C.
 27 §§1132(a)(3) and 1451(a)(1), the Board of Trustees is authorized, as a named

1 fiduciary, to bring this action on behalf of the Plaintiff Fund, its participants,
 2 and beneficiaries for the purpose of collecting withdrawal liability and
 3 delinquent fringe benefit contributions. The Plaintiff Fund is also authorized to
 4 bring this action in its own name pursuant to a provision contained within
 5 Article VIII, Section 18 of the Fund's Trust Agreement, which permits all legal
 6 actions to be prosecuted in the name of the Fund.

7 12. Defendant, Quad/Graphics, Inc. is engaged in the commercial printing
 8 business. Quad is a Wisconsin corporation, with its headquarters and principal
 9 place of business in Sussex, Wisconsin. At all times relevant to this action,
 10 Defendant has been an "employer" as the term is defined by section 3(5) of
 11 ERISA, 29 U.S.C. § 1002(5), and was engaged in an industry affecting
 12 commerce, as defined by section 301(a) of the Labor-Management Relations
 13 Act, 29 U.S.C. § 185(a).

14 **FACTS**

15 **The Partial Withdrawal Liability Assessment**

16 13. In July 2010, Quad acquired World Color (USA), formerly Quebecor World
 17 (USA), Inc. ("Quebecor"). Quebecor had contributed to the Plaintiff Fund
 18 pursuant to various collective bargaining agreements ("CBAs") at several of its
 19 facilities. Quebecor had a CBA with the Graphic Communications Conference,
 20 International Brotherhood of Teamsters, Local 826-C, under which Quebecor
 21 was required to make contributions to the ERF on behalf of certain of its
 22 employees at Quebecor's Versailles, Kentucky facility.

23 14. In December 2010, the employees at the Versailles, Kentucky facility voted
 24 to decertify Local 826-C as their exclusive bargaining representative.

25 15. Quad notified ERF in writing of the decertification. Quad also notified ERF
 26 it would cease participation in the ERF at all of its other facilities.

27 16. On March 13, 2012, the ERF sent Quad notices of (a) 2010 Partial

1 Withdrawal Liability, and (b) 2011 Complete Withdrawal Liability, both of
 2 which the ERF revised on February 1, 2013. The ERF's notice also demanded
 3 payment from Quad on both liability assessments. Under the February 1, 2013
 4 assessment, ERF set forth a schedule of payments requiring Quad to pay
 5 \$321,151.22 in monthly payments for 20 years on the 2010 Partial Withdrawal
 6 and \$351,501.80 per month for approximately 8 1/2 years for the 2011
 7 Complete Withdrawal.

8 17. After ERF had audited Quad's Versailles facility, ERF was advised by Quad
 9 that Quad had not paid contributions due for unused vacation time paid to some
 10 of its employees between 2009 and 2011. Quad represented to ERF that an
 11 additional \$14,000 was owed to ERF for such payments. Quad has never paid
 12 this amount, despite acknowledging it was owed as of July 2013.

13 18. Quad disputed the 2010 Partial Withdrawal Liability Assessment and the
 14 calculation of the 2011 Complete Withdrawal Liability Assessment and related
 15 demands for payments as described in Paragraph 16, above. Among other
 16 things, Quad took the position that even though it ceased participating in the
 17 Fund in 2010, the obligation to contribute for its employees at the Versailles
 18 facility did not cease until January 2011, such that it had no partial withdrawal
 19 liability for 2010. ERF took the position that the obligation to contribute for
 20 Versailles ceased when the vote to decertify was confirmed in December 2010,
 21 thereby creating partial withdrawal liability for 2010.

22 **The Arbitration Proceedings**

23 19. Quad submitted its dispute over the Withdrawal Liability Assessment to
 24 arbitration pursuant to Section 4221(a)(1) of ERISA, 29 U.S.C. §1401(a)(1).
 25 The arbitration proceedings were conducted in accordance with the Multi-
 26 Employer Pension Plan Arbitration Rules for Withdrawal Liability Disputes
 27 ("Rules") of the American Arbitration Association ("AAA").

1 20. Quad's challenges to ERF's liability assessments included the question of
2 whether Quad's obligation to contribute to the ERF for Versailles ceased in
3 December 2010 and whether the ERF properly calculated the 2010 Partial and
4 2011 Complete Withdrawal Liability Assessments.

5 21. Thomas J. Brewer ("Arbitrator") is presiding over the Arbitration Hearing,
6 in which some testimony was held on February 24-26, 2015 and additional
7 testimony and evidence was recently taken on November 3, 2015, in Los
8 Angeles, California. On May 18, 2015, the Arbitrator issued and Interim
9 Award, which is attached hereto as Exhibit 1.

10 22. In the Interim Award, the Arbitrator determined Quad's obligation to
11 contribute to the ERF under the Versailles CBA did not cease in December
12 2010 but was instead extended beyond the date the ERF had originally used for
13 calculating partial withdrawal liability. (Ex. 1, Interim Award at 13-14, ¶¶1-4).
14 No finding was made affecting Quad's obligation to continue making its
15 required interim payments on the original assessment pending the issuance of a
16 Final Award.

17 23. In the Interim Award, the Arbitrator found the ERF had not complied with
18 the law when determining the date on which Quad's obligation to contribute to
19 the plan ceased. Adopting this "vacation deferral rule," the Arbitrator's interim
20 decision found that as a matter of law, Quad's obligation to make contributions
21 to the Plaintiff Fund for employees at the Versailles, Kentucky facility, and the
22 cessation of such obligation, was dependent on when it paid its employees for
23 the unused vacation days which were accrued in one year, but were paid out in
24 a subsequent year.

25 24. This "vacation deferral rule" adopted by the Arbitrator had never been
26 applied by ERF in its prior determinations of when a participating employer's
27 obligation to make contributions to the Plaintiff Fund ceased, and is
28

1 inconsistent with longstanding case law holding that when a vote to decertify a
2 union is certified by the National Labor Relations Board, an employer's
3 obligation to contribute to a fund ceases.

4 25. As a result, the "vacation deferral rule" was not applied to Quad's other
5 withdrawing facilities, many of which have provisions in their collective
6 bargaining agreements that mirror the terms the Arbitrator relied upon in
7 reaching his decision as to the Versailles, Kentucky facility.

8 26. ERF was directed by the Arbitrator to perform a reassessment of Quad's
9 withdrawal liability consistent with the Arbitrator's findings, which included
10 this new "vacation deferral rule". Since the consistent application of this rule
11 will require a reassessment of the dates for all of Quad's facilities governed by
12 CBAs having terms that are similar to those of the Versailles facility, (assuming
13 the Arbitrator's interim award is made final and is affirmed), the original
14 assessments as to these other facilities will also need to be adjusted.

15 27. Under any revised assessment applying the "vacation deferral rule"
16 consistently to all of Quad's facilities, Quad will continue to have two monthly
17 payment obligations greater than or equal to its original assessment. Based on
18 the facts currently known to ERF, the reassessment will result in a partial
19 withdrawal liability for 2011 of \$113,075,692, requiring 20 years of monthly
20 payments of \$348,967.47, and a complete withdrawal liability in 2012 of
21 \$94,453,492, requiring 20 years of monthly payments of \$331,056.27.

22 28. Once the ERF performs its reassessment, the Arbitrator will be required to
23 issue his Final Award under 29 U.S.C §1401(d) in which he is required to state
24 whether there has been any overpayment or underpayment by Quad towards its
25 reassessed withdrawal liabilities and make adjustments, as necessary. As
26 presently calculated by ERF, there should be no finding of an overpayment
27 under the reassessed amount since the revised assessment produces a larger
28

1 liability than was originally assessed.

2 29. The ongoing Arbitration and the terms of the Arbitrator's final award have
 3 no impact on (a) Quad's liability for failing to make its required interim
 4 payments; and (b) Quad's liability for unpaid contributions.

5 30. As provided in 29 U.S.C. §1399(c)(2), until a final award is issued by the
 6 Arbitrator, Quad is required to make its interim payments on the withdrawal
 7 liability as was previously assessed by the ERF.

8 **Quad Ceases to Make Interim Payments**

9 31. Based on a claim that the Arbitrator's Interim Award was a final award as
 10 required by 29 U.S.C. §1401(d), Quad ceased making interim payments due on
 11 the challenged 2010 Partial Withdrawal Liability assessment.

12 32. Quad is obligated to continue making interim payments on the 2010 Partial
 13 Withdrawal Liability assessment because the Arbitrator's award is not a "final
 14 decision" under Section 4221(d) of ERISA, 29 U.S.C. §1401(d).

15 33. Quad has not made any interim payments on the 2010 Partial Withdrawal
 16 Liability assessment since June 2015. Quad has further advised ERF that it
 17 does not intend to make any further interim payments on that assessment.

18 34. ERF has demanded that Quad resume making the interim payments on the
 19 2010 Partial Withdrawal Liability assessment; however, Quad has refused. The
 20 missed monthly payments for July 2015 through December 2015, and going
 21 forward are \$321,151.22 per month.

22 **The Failure to Comply With the Requests for Information**

23 35. On November 12, 2015, ERF sent request for information on Quad's various
 24 facilities pursuant to the provisions of 29 U.S.C. §1399(a). A true and correct
 25 copy of one such request is attached to this complaint as Exhibit 2.

26 36. Pursuant to the provisions of 29 U.S.C. §1399(a), "An employer shall,
 27 within 30 days after a written request from the plan sponsor, furnish such

1 information as the plan sponsor reasonably determines to be necessary to enable
2 the plan sponsor to compliance with the requirements of this part.”

3 37. The information requested from Quad is necessary in order for ERF to
4 determine the full amount of Quad’s liability for unpaid contributions owed for
5 vacation time paid to Quad’s employees at its various facilities.

6 38. In addition to the contributions Quad has admitted to owing to ERF for the
7 unused vacation time paid to employees at the Versailles facility for 2009
8 through 2011, ERF is informed and believes, and thereon alleges, that Quad
9 owes contributions for similar payments made to employees at the Versailles
10 facility and Quad’s other facilities for the years 2009 to 2013. This requested
11 information is necessary for the determination of those additional amounts.

12 39. More than thirty days have now passed and Quad has not provided any of
13 the requested information. Additionally, despite inquiries made to Quad’s
14 counsel asking whether a response would forthcoming, ERF has heard nothing
15 to date.

16 40. The ongoing Arbitration and the terms of the Arbitrator’s final award have no
17 impact on Quad’s failure to provide the information requested of it under 29
18 U.S.C. 1399(a).

19 **FIRST CLAIM FOR RELIEF**

20 **(For monies due on the obligation to make interim payments pending
21 rendition of Final Award in arbitration.)**

22 41. ERF incorporates by reference the allegations contained in Paragraphs 1
23 through 40 as if fully set forth herein.

24 42. Pursuant to 29 U.S.C. §1399(c)(2), withdrawal liability must be paid in
25 accordance with the schedule set forth by ERF in its assessment
26 “notwithstanding any request for review or an appeal of determinations of the
27 amount of such liability or other schedule.”

1 43. Under 29 U.S.C. §1401(d), regardless of any dispute submitted to
2 arbitration, an employer is required to continue making interim payments until
3 the arbitrator has issued a Final Award. The failure to make the required interim
4 payments subjects an employer to liability for penalties, interest and attorney's
5 fees, even if the arbitrator eventually rules in the employer's favor on a
6 challenge to the assessment.

7 44. There has been no final award issued in the arbitration between the parties.

8 45. In June 2015, Quad ceased making payments on the assessment attributed to
9 the partial withdrawal in 2010. As a result, monthly payments of \$321,151.22
10 from July 2015 forward are due and owing to ERF, together with interest,
11 penalties, and attorney's fees.

12 **SECOND CLAIM FOR RELIEF**

13 **(For money due on obligation to make required contributions for
14 payments made to employees on unused vacation time.)**

15 46. ERF incorporates by reference the allegations contained in Paragraphs 1
16 through 45 as if fully set forth herein.

17 47. Quad has failed to pay ERF the contributions admittedly owed for hours
18 paid to employees of its Versailles facility between 2009 through 2011 for
19 unused vacation time in the amount of approximately \$14,000, the exact
20 amount will be subject to proof at trial.

21 48. ERF is informed and believes and thereon alleges that Quad also paid
22 employees of its Versailles facility for unused vacation time in 2012 and 2013
23 for which ERF is also due contributions under the terms of the CBA.

24 49. ERF is further informed and believes and thereon alleges that Quad has paid
25 employees of its other facilities for unused vacation time in 2009, 2010, 2011,
26 and 2012 for which ERF is also due contributions under the terms of the
27 applicable CBA's.

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1 50. As a result of Quad's a failure to make the required contributions for hours
2 paid on unused vacation time, ERF has been damaged in an amount presently
3 unknown but in no event less than \$14,000 with the actual amount subject to
4 proof at time of trial. ERF's inability to more accurately set forth the full
5 amount owed for unpaid contributions on unused vacation time paid is a result
6 of Quad's failure to comply with ERF's 29 U.S.C. §1399(a) demand for
7 information.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, ERF prays for the following relief:

10 **FIRST CLAIM FOR RELIEF**

11 1. For damages in an amount subject to proof at time of trial for the unpaid interim
12 payments required to me made on the assessment of withdrawal liability prior to
13 the entry of a Final Award in Arbitration;

14 2. For an award of interest and penalties for the unpaid interim payments required
15 to be made on the assessment of withdrawal liability to the entry of a final
16 Award in Arbitration;

17 3. For an award of costs, including attorneys' fees incurred in bringing this action
18 for the collection of interim payments, interest, and penalties;

19 4. For such other and further relief as the court deems just and proper.

20 **SECOND CLAIM FOR RELIEF**

21 5. For damages in an amount subject to proof a time of trial for the unpaid
22 contributions due for unused vacation time paid to Quad's employees;

23 6. For an award of interest and penalties on the unpaid contributions do for unused
24 vacation time paid to Quad's employees;

25 7. For an award of costs, including attorneys' fees incurred in bringing this action
26 for the collection of interim payments, interest, and penalties;

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1 8. For such other and further relief as the court deems just and proper.
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3 Dated: January 6, 2016

4 LAW OFFICES OF ANTHONY T. DITTY
5 CORNWELL & BALDWIN

6 By: /s/ Anthony T. Ditty

7 Anthony T. Ditty
8 Attorneys for Plaintiffs, GCIU-Employer
9 Retirement Fund and Board of Trustees of
10 the GCIU-Employer Retirement Fund

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